

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR ISSUE
CERTIFICATION UNDER F.R.C.P.
23(c)(4)**

Judge: Hon. Yvonne Gonzalez Rogers

Before the Court is Plaintiffs’ Motion for Issue Certification under Federal Rule of Civil Procedure 23(c)(4) (Dkt. 894) (the “Motion”). The Motion asks the Court to certify under Federal Rule of Civil Procedure 23(c)(4) the same liability issues that will be decided in connection with the claims already certified under Rule 23(b)(2), which are scheduled for trial in November.

The Court **GRANTS** the Motion.

Rule 23(c)(4) certification is available where, as here, a party meets the Rule 23(a) requirements as well as Rule 23(b)(2). *See Taison Commc’ns, Inc. v. Ubiquiti Networks, Inc.*, 308 F.R.D. 630, 633 (N.D. Cal. 2015); *Avilez v. Pinkerton Gov’t Serv.*, 596 F. App’x 579, 579 (9th Cir. 2015). In certifying every claim, this Court already found that all Rule 23(a) elements are met, and that certification is warranted under Rule 23(b)(2). *See* Dkt. 803 at 24-27, 33-34.

The Court now certifies the same liability issues under Rule 23(c)(4) because doing so “materially advance[s] the disposition of the litigation as a whole.” *LSIMC, LLC v. Am. Gen. Life Ins. Co.*, 2022 WL 4596597, at *12 (C.D. Cal. Aug. 4, 2022); *see also* Principles of the Law of Aggregate Litigation § 2.02 (American Law Institute 2010). Issue certification promotes efficiency because, although follow-on actions may be required, “at least it wouldn’t be necessary in each of those trials to determine whether the challenged practices were unlawful.” *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 672 F.3d 482, 491 (7th Cir. 2012) (Posner, J.) (explaining why Rule 23(c)(4) certification is appropriate and useful even where an injunctive Rule 23(b)(2) class has been certified). There is no reason to require Class Members (and Google) to repeatedly remarshal the same evidence, engage the same liability experts, and relitigate the same complicated technical matters, especially where Class counsel has made a substantial investment to do that work for them. Issue certification promotes judicial efficiency by providing class members—numbering in the tens of millions—with an opportunity to obtain preclusive findings by way of an already scheduled trial without adding any more work for the parties or the Court. Conversely, if Google prevails at the (c)(4) trial, it will defeat all claims.

DATED: _____

HON. YVONNE GONZALEZ ROGERS
United States District Judge